

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR  
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San Francisco, CA 94102  
(415) 703-5050



March 16, 2000

Dave Parker  
Project Office Engineer  
San Benito County Public Works Department  
3220 Southside Road  
Hollister, CA 95023

RE: Granite Construction Company Contract No. SM-0011(1)  
Project No. 612  
Hauling of Roadway Excavation Material  
Public Works Case No. 99-081

Dear Mr. Parker:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the hauling of roadway excavation material by Granite Construction Company ("Granite") from County Project 612, is a public work subject to the payment of prevailing wages. In addition, the contract between San Benito County Public Works Department ("County") and Granite provides that prevailing wages are to be paid to all workers involved in the execution of the larger public works project.

Under a contract with the County, Granite agreed to clear grub, remove pavement and excess dirt, regrade and repave a county-owned roadway. Your staff, as well as Tim Miller of Granite, has assured my department that the on-site labor for this project, including the excavation and loading of the dump truck, was paid at the prevailing wage rate. Your inquiry is whether the off-hauling of the roadway excavation material, which was disposed of at a KOA Campground, is also a public work. Apparently, this off-hauling was performed by both Hildebrand Trucking drivers and equipment and Granite employees.

Labor Code section 1720(a)<sup>1</sup> generally defines "public work" to mean: "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public

<sup>1</sup> All subsequent references to Code sections are to the Labor Code.

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funds...."<sup>2</sup> Section 1772 provides that, "[W]orkers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

The on-site road excavation and repaving performed by Granite is a public work under Section 1720(a). It is construction, alteration and repair work done under contract and paid for with public funds.

Therefore under section 1772, the hauling away of the excavation material is also a public work because, as part of the contract between Granite and the County, it is performed in execution of the on-site public work. For this reason, prevailing wages also must be paid to the workers performing the off-hauling work.

I also note that under the Special Provisions annexed to the contract, specifically paragraph 5-1.05 entitled "Labor Code Requirements," Granite is to comply with section 1774. Labor Code section 1774 states: "The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract." Because the truck drivers are employed in the execution of the contract, this contract provision appears to require prevailing wages be paid to these workers. Under the recent appellate court decision in Tippett v. Terich (1995), 37 Cal.App.4th 1517, 44 Cal.Rptr.2d 862, employees may have a private cause of action to enforce their third party rights to receive prevailing wages under this type of agreement. Therefore, the payment of prevailing wages to the


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<sup>2</sup> Section 1720.3 provides: "For the limited purposes of Article II (commencing with 1770), 'public works' also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency..." Section 1720.3 was recently amended effective January 1, 2000. This new amendment broadens the definition of public works to include contracts with **any political subdivision** of the state for the hauling of refuse from a public work site. The off-hauling of the roadway excavation material on the instant project is not covered under Section 1720.3 because the contract involved a county, and not a state agency. Under the amendment to that section, had this contract been entered into after December 31, 1999, the off-hauling may have been covered under Section 1720.3.

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workers hauling the roadway excavation material from this project  
also may be enforceable as a matter of contract.

Sincerely,

A handwritten signature in cursive script that reads "Stephen J. Smith". The signature is written in dark ink and is positioned above the printed name and title.

Stephen J. Smith  
Director